

The Place of the Louisiana Civil Code in the Hispanic Civil Codifications: Inclusion in the Comments to the Spanish Civil Code Project of 1851

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The Place of the Louisiana Civil Code in the Hispanic Civil Codifications: The Comments to the Spanish Civil Code Project of 1851

Agustín Parise*

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I. INTRODUCTION

The Louisiana Civil Code of the year 1825 ("Louisiana Civil Code") had a strong presence in the worldwide nineteenth century codification movements. This Article shows that the influence of the Louisiana text was not limited to the codification endeavors of French-¹ or English-speaking² countries; but that it also extended to other codification works drafted in Spanish.³

The Louisiana Civil Code was influential in codification projects due mainly to the inclusion of references to it in a Spanish scholarly production by Florencio García Goyena: *Concordancias, Motivos y Comentarios del Código Civil Español* (*Concordancias*) of 1852.⁴ The *Concordancias* commented on the project of

1. For an example of the influence of the Louisiana Civil Code in the drafting of the Civil Code of Quebec of 1866, see, among others, E. Fabre-Surveyer, *The Civil Law in Quebec and Louisiana*, 1 LA. L. REV. 649 (1938); John P. Richert & E. Suzanne Richert, *The Impact of the Civil Code of Louisiana upon the Civil Code of Quebec of 1866*, 8 R.J.T. N.S. 501 (1973).

2. For an example of the influence of the Louisiana Civil Code in the North American codification movements, see, among others, Rodolfo Batiza, *Sources of the Field Civil Code: The Civil Law Influences on a Common Law Code*, 60 TUL. L. REV. 799 (1986).

3. For additional examples of the influence of the Louisiana Civil Code in the Spanish codification movements, see, among others, Rolf Knutel, *Influences of the Louisiana Civil Code in Latin America*, 70 TUL. L. REV. 1445 (1996).

4. FLORENCIO GARCÍA GOYENA, *CONCORDANCIAS, MOTIVOS Y COMENTARIOS DEL CÓDIGO CIVIL ESPAÑOL* (1852). Almost sixty years ago, Miguel Royo Martínez published a work in Spanish that mentions, partially, the influence that the Louisiana Civil Code had on the Spanish Civil Code of 1889. See Miguel Royo Martínez, *Influencia del Código Civil de la Luisiana sobre el Vigente Código Civil Español*, 5 ANUARIO DE ESTUDIOS AMERICANOS 483-506 (1948).

In addition, the Louisiana Law Review published a special issue almost twenty-five years ago that included two works that made important studies of the *Concordancias*. See José María Castan Vázquez, *Reciprocal Influences Between the Laws of Spain and Louisiana*, 42 LA. L. REV. 1473 (1982); Shael Herman, *Louisiana's Contribution to the 1852 Project of the Spanish Civil Code*, 42 LA. L. REV. 1509 (1982).

drafting a civil code for Spain (the "Spanish Project") and mentioned exactly 1,103 articles of the Louisiana Civil Code throughout the comments to the 1,992 articles that comprise the Spanish Project. The *Concordancias* proved to be a handy reference for the codification projects in Spain and Latin America. Thanks to the *Concordancias*, the influence of the Louisiana Civil Code spread to regions that intended to adopt civil codes during the nineteenth century.

The Louisiana Civil Code was also influential in codification projects because of the inclusion of its text in the 1840 French work by Fortuné Anthoine de Saint-Joseph: *Concordance entre les Codes civils étrangers et le Code Napoléon* ("Concordance").⁵ The *Concordance* was used by codifiers around the world when they needed to refer to the existing legislative precedents in a given area of law.

This Article will focus mainly on the *Concordancias*. The *Concordancias* and the *Concordance* were, in practice, the most efficient ways to provide codifiers with complete surveys of pertinent codification developments of the time. To have a complete comparative legal library was not only very expensive and impractical, but also very rare.⁶

5. FORTUNE ANTHOINE DE SAINT-JOSEPH, *CONCORDANCE ENTRE LES CODES CIVILS ETRANGERS ET LE CODE NAPOLEON* (1840). The first edition dedicated 126 pages to a chart that included and helped to compare the texts of: the *Code Napoléon (Français)*, the Civil Code of the Kingdom of the Two Sicilies (*des Deux-Siciles*), the Louisiana Civil Code (*de la Louisiane*), the Civil Code of Sardinia (*Sarde*), the Civil Code of Vaud (*du Canton de Vaud*), the Civil Code of the Netherlands (*Hollandais*), the Civil Code of Bavaria (*Bavarois*), the Civil Code of Austria (*Autrichien*), and the Civil Code of Prussia (*Prussien*). In addition, the first edition included, in 146 pages, diverse extracts of the texts of: the Swedish Civil Code (*Suède*), the Civil Code of Berne (*du canton de Berne*), the Civil Code of Fribourg (*du canton de Fribourg*), the Civil Code of Aargau (*du canton d'Argovie*), the Civil Code of Baden (*du grand-duché de Bade*), and the Civil Code of Haiti (*d'Haiti*). Finally, the first edition also included, in nine pages, a chart with the relevant articles on mortgages of: the Swedish Civil Code (*Suède*), the Civil Code of Wurttemberg (*Wurtemberg*), the Civil Code of Geneva (*du canton de Genève*), the Civil Code of Fribourg (*du canton de Fribourg*), the Civil Code of Saint Gallen (*du canton de Saint-Gall*), and the Civil Code of Greece (*Grèce*). There was a second edition in 1842, and a third edition in 1856, drafted with the contribution of his son, Arthur de Saint-Joseph, that was extended and presented in four volumes. See also Knutel, *supra* note 3, at 1449.

6. See generally MICHAEL H. HOEFELICH & LOUIS V. DE LA VERGNE, *THE 1877 SALE CATALOGUE OF GUSTAVUS SCHMIDT'S LIBRARY* (2005); Mitchell

This Article (1) mentions some aspects of the main codification movements in Europe, the United States of America, Spain, and the state of Louisiana; (2) explains the structure of the *Concordancias*, the references to the Louisiana Civil Code within them, and the influences that the *Concordancias* had in Spanish and Latin American codifications; and (3) provides, by means of three appendices,⁷ an example of a scholarly comment to one of the articles of the Spanish Project included in the *Concordancias*, a complete outline of the Spanish Project, and a survey of the different articles of the Louisiana Civil Code that are mentioned in the *Concordancias*. This Article will help readers understand the place that the Louisiana Civil Code occupied in nineteenth century Hispanic codification endeavors.

II. NINETEENTH CENTURY CODIFICATION MOVEMENTS⁸

Codification,⁹ as it is understood today,¹⁰ experienced a development during the eighteenth and nineteenth centuries.¹¹ Several countries in the Western hemisphere engaged in a general pursuit of the codification of their civil law dispositions. The processes of scientific revolution—which had started with the Enlightenment and Humanist Movement and was followed by

Franklin, *Libraries of Edward Livingston and of Moreau Lislet*, 15 TUL. L. REV. 401 (1940); Olivier P. Moréteau, *Boissonade Revisit  : De la Codification Doctrinale    une Langue Juridique Commune*, in DE TOUS HORIZONS M  LANGES XAVIER BLANC-JOUVAN 122 (2005).

7. See *infra* apps. A–C.

8. For a complete survey (in Portuguese) of the nineteenth century codification movements, updated until the 1930s, see 2 EDUARDO ESPINOLA, *TRATADO DE DIREITO CIVIL BRASILEIRO* 427–515 (1939). This survey will provide the reader with a complete understanding of the early results of the nineteenth-century codification movements.

9. See generally Alain Levasseur, *On the Structure of a Civil Code*, 44 TUL. L. REV. 693 (1970); Jean Louis Bergel, *Principal Features and Methods of Codification*, 48 LA. L. REV. 1073 (1988).

10. Codification has existed throughout history: for example, the Manusmriti, the Old Testament, the Koran, the Hammurabi Code, and the Roman codes. See 1 GUILLERMO A. BORDA, *TRATADO DE DERECHO CIVIL* 109 (7th ed. 1980).

11. For a very complete study of the previous period (in French), see JACQUES VANDERLINDEN, *LE CONCEPT DE CODE EN EUROPE OCCIDENTALE DU XIII AU XIX SI  CLE*, *ESSAIS DE D  FINITION* (1967).

Rationalistic Natural Law Theorizing—led the way to codification.¹² Codification was a way of ordering the law and replacing the existing provisions with new ones,¹³ grouping the different areas of law in an organic, systematic,¹⁴ clear, accurate, and complete way.¹⁵ Moreover, codification was technically superior to the systems of mere compilation that had previously existed throughout Europe.¹⁶ Among its formalistic operations, codification included laying out a plan and expressing that plan with terminology and phraseology.¹⁷

A. Europe

Ruled by the new political, intellectual, and legal environment,¹⁸ the European continent was an appropriate place for the early developments of codification. For almost 250 years, many civil codes were drafted and enacted for the different regions of the Western hemisphere. Among those drafts, four codification endeavors were of significant importance.

Early interest in modernizing codes resulted first in 1683 with the enactment of the *Danske Lov* (Danish Law),¹⁹ which was a product of the Scandinavian absolutist codification movements.²⁰ In 1756, a civil code called *Codex Maximilianeus Bavaricus Civilis*²¹ was drafted by Wiguläus Xaverius Aloysius Freiherr von

12. 1 ABELARDO LEVAGGI, *MANUAL DE HISTORIA DEL DERECHO ARGENTINO* 185 (2001).

13. 1 LUIS DIEZ-PICAZO & ANTONIO GULLON, *SISTEMA DE DERECHO CIVIL* 51 (1982).

14. 1 ARTURO ALESSANDRI RODRIGUEZ & MANUEL SOMARRIVA UNDURRAGA, *CURSO DE DERECHO CIVIL* 49 (1945).

15. Genaro R. Carrió, *Judge Made Law Under a Civil Code*, 41 LA. L. REV. 993, 993 (1981).

16. 1 ALFONSO GARCÍA-GALLO, *MANUAL DE HISTORIA DEL DERECHO ESPAÑOL* 476 (1984).

17. Bergel, *supra* note 9, at 1084–85.

18. Gunther A. Weiss, *The Enchantment of Codification in the Common-Law World*, 25 YALE J. INT'L L. 435, 453 (2000).

19. Additional information (in Danish) on the *Danske Lov* is available at <http://bjoerna.dk/DanskeLov> (last visited Feb. 1, 2008).

20. Bergel, *supra* note 9, at 453.

21. An electronic version (in German) of the Code is available at http://dlib-mpier.mpg.de/m/kleioc/0010/exec/bigpage/%22119861_00000001%22 (last visited Feb. 1, 2008).

Kreittmayr²² for the Duchy of Bavaria (now part of Germany).²³ This second code was a summary of the Roman law applicable in that region,²⁴ which at that time had mutated into a German common law.²⁵ Prior to the enactment of the civil code in 1756, Bavaria had enacted a criminal code (in 1751) and a code of procedure (in 1753) and was thus the first region of Europe to enact these three codes.²⁶

The codification movements were also marked by the drafting of the French Civil Code of 1804 ("*Code Napoléon*") and the exegetic school of interpretation that was developed after its enactment.²⁷ This exegetical school advocated the protection of the text of the *Code Napoléon* and pursued a veneration of the text of the law and the intention of the codifiers.²⁸ As a result of that method, the *Code Napoléon* had a strong influence on codification movements worldwide.²⁹ The *Code Napoléon* was effective in the

22. For further reading (in German) on Kreittmayr, see Von Hans Roll, *Kreittmayr: Persönlichkeit, Werk und Fortwirkung*, 47 ZBLG 42 (1979), available at http://mdz1.bib-bvb.de/cocoon/bayern/zblg/seite/zblg42_0059 (last visited Feb. 1, 2008).

23. PETER STEIN, *ROMAN LAW IN EUROPEAN HISTORY* 111 (2003).

24. 2 ESPINOLA, *supra* note 8, at 420.

25. ERNEST J. SCHUSTER, *THE PRINCIPLES OF GERMAN CIVIL LAW* 1 (1907).

26. VANDERLINDEN, *supra* note 11, at 39.

27. For a complete survey of the influence of the *Code Napoléon*, see generally, CHARLES SERUZIER, *HISTORICAL SUMMARY OF THE FRENCH CODES WITH FRENCH AND FOREIGN BIBLIOGRAPHICAL ANNOTATIONS CONCERNING THE GENERAL PRINCIPLES OF THE CODES FOLLOWED BY A DISSERTATION ON CODIFICATION* (David A. Combe trans., 1979).

28. 1 LEVAGGI, *supra* note 12, at 195.

29. For additional reading on the influence of the *Code Napoléon*, the following works are suggested: JACQUES BOUINEAU ET JEROME ROUX, *200 ANS DE CODE CIVIL* (2004); COUR DE CASSATION ET AL., *LE CODE CIVIL 1804–2004—LIVRE DU BICENTENAIRE* (2004); JEAN-LOUIS HALPÉRIN, *THE CIVIL CODE* (David W. Gruning trans., 2001); 1 MARCEL PLANIOL, *TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL* 76 (4th ed. 1948); UNIVERSITÉ PANTHÉON-ASSAS (PARIS II), *1804–2004—LE CODE CIVIL: UN PASSÉ, UN PRÉSENT, UN AVENIR* (2004); Alejandro Guzmán Brito, *La Influencia del Código Civil Francés en las Codificaciones Americanas*, in 9 CUADERNOS DE EXTENSIÓN JURÍDICA DE LA UNIVERSIDAD DE LOS ANDES 17 (2004); Charles Sumner Lobingier, *Napoleon and His Code*, 32 HARV. L. REV. 114 (1919); M.C. Mirow, *The C. Napoleon: Buried but Ruling in Latin America*, 33 DENV. J. INT'L L. & POL'Y 179 (2005); M.C. Mirow, *Individual Experience in Legal Change: Exploring a Neglected Factor in Nineteenth-Century Latin American Codification*, 11 SW. J. L. & TRADE AM. 301 (2005); M.C. Mirow, *The Power of Codification in Latin America: Simon Bolivar and the Code Napoleon*, 8 TUL. J. INT'L & COMP. L. 83 (2000); Roscoe Pound, *The French Civil Code and the Spirit of Nineteenth*

colonies of the French Empire (e.g., in Martinique and Guiana)³⁰ and followed the armies of Napoleon (e.g., in Belgium and the Hanseatic territories).³¹ Additionally, it was adopted through direct persuasion (e.g., in the Grand Duchy of Warsaw and Westphalia).³² After France's expansionist military campaigns ended, other European territories voluntarily adopted, either by simple translation or with considerable modifications, several dispositions of the *Code Napoléon* (e.g., in the Netherlands and Romania).³³ The expansion of the *Code Napoléon* was not limited to Europe. In Latin America, the *Code Napoléon* served as inspiration for several countries³⁴ (e.g., in Argentina³⁵ and Peru³⁶). In Africa, its influence was less significant³⁷ (e.g., in Egypt³⁸). Finally, in the Near East, Lebanon was inspired by the French text; and in the Far East, Japan drafted a civil code significantly influenced by the French text,³⁹ which was applied without legislative approval from 1880 to 1896.⁴⁰

Another notable development in codification was the enactment of the *Bürgerliches Gesetzbuch* (BGB), or the Civil Code of Germany, in 1896. The BGB was a product of nineteenth-century German legal science and inspired the drafting of several twentieth century civil codes.⁴¹ Examples of its influence are the

Century Law, 35 B.U. L. REV. 77 (1955); Roscoe Pound, *The Influence of French Law in America*, 3 U. ILL. L. REV. 354 (1908); Ernst Rabel, *Private Laws of Western Civilization*, 10 LA. L. REV. 107 (1950).

30. SERUZIER, *supra* note 27, at 197.

31. 1 A.N. YIANNPOULOS, *LOUISIANA CIVIL LAW SYSTEM: COURSE OUTLINES* 45 (1971).

32. *Id.*

33. *Id.*

34. See generally 2 JORGE HORACIO ALTERINI ET AL., *LA CODIFICACIÓN: RAÍCES Y PROSPECTIVA LA CODIFICACIÓN EN AMÉRICA* (2004).

35. 1 YIANNPOULOS, *supra* note 31, at 46.

36. HALPÉRIN, *supra* note 29, at 94.

37. MARY ANN GLENDON ET AL., *COMPARATIVE LEGAL TRADITIONS: TEXT, MATERIALS AND CASES ON WESTERN LAW* 69 (3d ed. 2007).

38. 1 YIANNPOULOS, *supra* note 31, at 46.

39. For some aspects of the French influence in the Japanese codification movement, see generally Moréteau, *supra* note 6, at 103–27.

40. 1 YIANNPOULOS, *supra* note 31, at 46.

41. See generally Mathias Reimann, *Nineteenth Century German Legal Science*, 31 B.C. L. REV. 837 (1990).

Brazilian, Greek, Italian, and Portuguese civil codes.⁴² The influence of the BGB also extended to the codification works in Austria, Czechoslovakia, Hungary, Switzerland, Yugoslavia,⁴³ the Scandinavian countries, the USSR,⁴⁴ and even China and Japan.⁴⁵ In Latin America, a commission designated during the second decade of the twentieth century to amend the Civil Code of Argentina of 1871 claimed the BGB as one of its main sources of inspiration.⁴⁶

According to the aforementioned survey, both the *Code Napoléon* and the BGB turned out to be sources of inspiration for most other modern civil codes, not only in Europe, but also in Asia, Africa, and the Americas.⁴⁷

B. The United States of America

The United States of America was not immune to the codification movements.⁴⁸ Among the states that sought a codified system of civil law were Alabama,⁴⁹ California, Louisiana, Montana, North Dakota, South Dakota,⁵⁰ New York, and South Carolina.⁵¹

The United States codification movements derived their inspiration from three main sources: Jeremy Bentham's utilitarian

42. GLENDON ET AL., *supra* note 37, at 69–70.

43. *Id.* at 69; *see also* ATTILA HARMATHY, INTRODUCTION TO HUNGARIAN LAW 14 (1998).

44. Bergel, *supra* note 9, at 1075.

45. 1 JOSÉ PUIG BRUTAU, COMPENDIO DE DERECHO CIVIL 28 (1987).

46. Agustín Parise, *La Comisión de Reformas al Código Civil (1926). Aproximación Histórico-Jurídica a su Proyección*, IUS HISTORIA, Sept. 2006, at 15, <http://www.salvador.edu.ar/juri/reih/3ro/index.htm>.

47. *See also* 1 KONRAD ZWIEGERT & HEIN KÖTZ, AN INTRODUCTION TO COMPARATIVE LAW 68–110, 143–56 (Tony Weir trans., 1977).

48. *See generally* David Gruning, *Vive la Différence? Why No Codification of Private Law in the United States?*, 39 R.J.T. N.S. 153 (2005); John W. Head, *Codes, Cultures, Chaos, and Champions: Common Features of Legal Codification Experiences in China, Europe, and North America*, 13 DUKE J. COMP. & INT'L L. 1 (2003); Wienczyslaw J. Wagner, *Codification of Law in Europe and the Codification Movement in the Middle of the Nineteenth Century in the United States*, 2 ST. LOUIS U. L.J. 335 (1952); Weiss, *supra* note 18, at 435.

49. 2 ESPINOLA, *supra* note 8, at 447.

50. Bergel, *supra* note 9, at 1076.

51. CHARLES M. COOK, THE AMERICAN CODIFICATION MOVEMENT: A STUDY OF ANTEBELLUM LEGAL REFORM 121 (1981).

theory, the *Code Napoléon*, and David Dudley Field.⁵² The second was a useful mold that seemed to apply to the conditions in the United States and provided to the codifiers a code system that seemed to function correctly and with good results.⁵³ David Dudley Field, influenced by the works of Jeremy Bentham,⁵⁴ advocated codification during the mid-nineteenth century.⁵⁵ After drafting a civil code and four more codes in the period from 1847 to 1865,⁵⁶ Field gained a paramount position among the codifiers in the United States.⁵⁷ He believed that there was a need for a political code, a code of civil procedure, a code of criminal procedure, a code of private rights and obligations, and a code of crimes.⁵⁸ Many consider Field the fountainhead of the codification efforts in North America, and his drafting for the state of New York was very important at that time.⁵⁹ Even when his work for New York was not a complete success, the provisions of his draft in contract law were adopted by California, Georgia, Idaho, Montana, North Dakota, and South Dakota.⁶⁰

The numerous Roman codes, especially the Code of Justinian, were well known and frequently referred to when North American projects were drafted.⁶¹ The Louisiana Digest of 1808⁶² and the Louisiana Civil Code of 1825 were other significant contributions, as they provided examples of the possibility of codification inside the United States territory. Even when the aforementioned examples were not completely compatible with the common law systems that existed in the majority of states, they provided a methodology of reform from which to learn.⁶³

52. *Id.* at 74.

53. *Id.* at 71.

54. Shael Herman, *The Fate and the Future of Codification in America*, 40 AM. J. LEGAL HIST. 407, 422 (1996).

55. See generally Batiza, *supra* note 2.

56. Herman, *supra* note 54, at 421–22.

57. COOK, *supra* note 51, at 187.

58. Weiss, *supra* note 18, at 504.

59. COOK, *supra* note 51, at 187.

60. Herman, *supra* note 54, at 425.

61. COOK, *supra* note 51, at 74.

62. The complete name was *A Digest of the Civil Laws Now in Force in the Territory of Orleans*. 1808 La. Acts No. 120.

63. COOK, *supra* note 51, at 74.

C. *The State of Louisiana*

The state of Louisiana was no exception to the nineteenth-century codification movement. The legal culture of Louisiana was an isolated "Civil Law island" partially surrounded by a "sea of Common Law," a status that had to be safeguarded to survive.⁶⁴ As a result, on June 7th, 1806, the Legislative Council and the House of Representatives of the Territory of Orleans appointed James Brown⁶⁵ and Louis Casimir Elisabeth Moreau-Lislet,⁶⁶ two attorneys at law, to draft a civil code.⁶⁷ Later, on March 31st, 1808, the Legislature of the Territory of Orleans promulgated *A Digest of the Civil Laws Now in Force in the Territory of Orleans*⁶⁸ (the Digest). The Act of March 31st, 1808 read in relevant part:

Whereas, in the confused state in which the civil laws of this territory were plunged, by the effect of the changes which happened in its government, it had become indispensable to make known the laws which have been preserved after the abrogation of those which were contrary to the constitution of the United States, or irreconcilable with its principles, and to collect them in a single work, which might serve as a guide for the decision of the courts and juries, without recurring to a multiplicity of books, which, being for the most part written in foreign

64. Agustín Parise, *Non-Pecuniary Damages in the Louisiana Civil Code Article 1928: Originality in the Early Nineteenth Century and Its Projected Use in Further Codification Endeavors* 14 (May 18th, 2006) (unpublished LL.M. thesis, Louisiana State University, Paul M. Hebert Law Center) (on file with the LSU Law Library).

65. For additional information regarding Brown, see S. HERMAN ET AL., *THE LOUISIANA CIVIL CODE: A HUMANISTIC APPRAISAL* 24 (1981).

66. For additional information regarding Moreau-Lislet, see ALAIN A. LEVASSEUR, *LOUIS CASIMIR ELISABETH MOREAU-LISLET: FOSTER FATHER OF THE LOUISIANA CIVIL LAW* (1996); HERMAN ET AL., *supra* note 65, at 25.

67. The resolution of June 7th, 1806 reads:

Resolved by the Legislative Council and House of Representatives of the Territory of Orleans, in General Assembly convened, That both branches of the legislature shall appoint James Brown, and Moreau Lislet, lawyers, whose duty it shall be to compile and prepare, jointly, a Civil Code for the use of this territory. Resolved, That the two jurisconsults shall make the civil law by which this territory is now governed, the ground work [in French, base] of said code
1806 La. Acts No. 214.

68. 1808 La. Acts No. 120.

languages,⁶⁹ offer in their interpretation inexhaustible sources of litigation.⁷⁰

Several factors contributed to a tendency in the legal community to de-emphasize the Digest after its enactment.⁷¹ First, the Digest did not repeal all the civil laws that existed in Louisiana in 1808.⁷² Second, the drafters of the Digest did not include the former laws that governed insolvency proceedings.⁷³ Third, the enactment of the Digest was not followed by the creation of a powerful central authority for the application of the positive laws.⁷⁴ Finally, the influence of the common law in practice before the courts led to a tendency to search for answers "behind" the Digest.⁷⁵

At that same time, a remarkable and comprehensive codification movement started with Edward Livingston as its central figure. It had as its objective the drafting of a civil code, a code of practice, a commercial code, and a criminal code.⁷⁶ With respect to the first of those projected codifications, Livingston advocated adjustments and improvements indicated by past experiences so as to put an end to the uncertainties of the ancient civil laws.⁷⁷

On March 14th, 1822, the Louisiana Legislature resolved that three jurists should be appointed to revise the Digest:⁷⁸ Pierre

69. The Digest was originally drafted in French and followed by a translation into English. An act by the Legislative Council and the House of Representatives on April 14th, 1807 ordered the payment to the translators. See 1807 La. Acts No. 192. See also Didier Lamèthe & Olivier Moréteau, *L'interprétation des Textes Juridiques Rédigés dans plus d'une Langue*, in 2 REVUE INTERNATIONALE DE DROIT COMPARÉ [R.I.D.C.] 327, 340 (2006).

70. 1807 La. Acts No. 120.

71. RICHARD HOLCOMBE KILBOURNE, JR., A HISTORY OF THE LOUISIANA CIVIL CODE: THE FORMATIVE YEARS, 1803–1839, at 62 (1987).

72. *Id.*

73. *Id.*

74. *Id.* at 63.

75. *Id.*

76. Joseph Dainow, *The Louisiana Civil Code*, in CIVIL CODE OF LOUISIANA REVISION OF 1870 WITH AMENDMENTS TO 1947 xi, xxi (1947).

77. *Id.*

78. The Resolution dated March 14th, 1822 read:

Resolved by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That three jurisconsults be appointed by the joint ballot of both houses of the general assembly of this state, to revise the civil code [Digest] by amending the same in

Derbigny,⁷⁹ Edward Livingston,⁸⁰ and Louis Casimir Elisabeth Moreau-Lislet. The three jurists submitted a Preliminary Report to the Louisiana Senate on February 13th, 1823.⁸¹ On March 26th, 1823, the Louisiana Legislature ordered that the revision of the Digest be printed and distributed as soon as it was ready to send to press.⁸² Finally, in 1825, the Louisiana Civil Code, having 3,522 articles, took effect.⁸³ The act approved on April 12th, 1824 read:

Sec.1. Be it enacted by the Senate and House of Representatives of the state of Louisiana, in General Assembly convened; That the amendments made to the civil code [Digest] of the state shall be in force from the day of their promulgation, as hereinafter provided:

Sec.2. And be it further enacted, That the said code as amended, shall be printed in the English and French

such a manner as they will deem it advisable, and by adding under each book, title, and chapter of said work, such of the laws as are still in force and not included therein, in order that the whole be submitted to the legislature at its first session, or as soon as the said work have [sic] been completed.

1822 La. Acts No. 108.

79. For additional information regarding Derbigny, see HERMAN ET AL., *supra* note 65, at 28.

80. For additional information regarding Livingston, see *id.* at 26; CARLETON HUNT, *LIFE AND SERVICES OF EDWARD LIVINGSTON* 7-50 (1903); CHARLES HAVENS HUNT, *LIFE OF EDWARD LIVINGSTON* (1864); Ira Flory, *Edward Livingston's Place in Louisiana Law*, 19 LA. HIST. Q. 328 (1936); Mitchell Franklin, *Concerning the Historic Importance of Edward Livingston*, 11 TUL. L. REV. 163 (1937); Eugene Smith, *Edward Livingston and the Louisiana Codes*, 2 COLUM. L. REV. 24 (1902).

81. EDWARD LIVINGSTON, *A REPUBLICATION OF THE PROJET OF THE CIVIL CODE OF LOUISIANA OF 1825*, at LXXXV (1937).

82. The act dated March 26th, 1823 read:

An Act directing the revision of the civil code and the projected codes of commerce and of procedure to be printed. Section 1: Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened; That the Governor shall employ a printer to print in the manner in which bills for the use of the General Assembly of this state are printed, the revision of the civil code [Digest] and the projected codes of commerce and of procedure, as soon as the same shall be ready for the press.

1823 La. Acts No. 68.

83. CIVIL CODE OF THE STATE OF LOUISIANA (ANN.) (1825).

languages, opposite to one another, under the title of "Civil Code of the state of Louisiana."⁸⁴

D. Spain⁸⁵

The amount and diversity of legal dispositions throughout the Middle and Modern Ages drove Spain to pursue compilations. The result was a unique body that made access possible to all rules and included all dispositions in a chronological order. Although the compiled laws maintained their independence and substance within the compilation,⁸⁶ confusion resulted from the variety and

84. The act also read:

An Act to provide for the printing and promulgation of the amendments made to the civil code [Digest] of the state of Louisiana.

....

Sec. 7 And be it further enacted, That when the said civil code shall be printed and received the promulgation of it shall be made by the secretary of state, by sending a copy thereof to each of the courts of and within the state, of which transmission the date shall be recorded in the office of the secretary of state; and one month after said transmission, the said code shall be deemed promulgated and shall henceforward be in full force throughout the state.

Sec. 8 And be it further enacted [sic]; That it shall be the duty of the secretary of state, immediately after the said code shall have been printed and received by the Governor, to distribute it in the following manner, to wit: to each judge in this state, to the Attorney General and to each District Attorney, to the Judge and District Attorney of the District Court of the United States for the state of Louisiana to each of the clerks of said court, to each of the Governors of the several states and territories, to the Supreme Court of the United States, to the President of the United States, and to each member of the present Legislature, one copy bound in calf of said code, to each clerk of the several courts, throughout the state, and to each justice of the peace, one copy of said code. Five copies shall be deposited in the secretary's [sic] of state office; and the remaining number of copies shall be deposited with the state treasurer to be by him sold at such price as the Governor and Secretary of state may direct.

1824 La. Acts No. 172.

85. For a very complete study (in Spanish) of the Spanish codification movement, see generally JUAN BARÓ PAZOS, *LA CODIFICACIÓN DEL DERECHO CIVIL EN ESPAÑA (1808-1889)* (1992). For an overview of Spanish legal history, see Rafael Altamira, *Spain*, in 1 *A GENERAL SURVEY OF EVENTS, SOURCES, PERSONS AND MOVEMENTS IN CONTINENTAL LEGAL HISTORY* 579-702 (John Henry Wigmore trans., 1912). For a study of Hispanic law through the end of the Middle Ages, see generally E.N. VAN KLEFFENS, *HISPANIC LAW UNTIL THE END OF THE MIDDLE AGES* (1968).

86. GUILLERMO GARCÍA VALDECASAS, *PARTE GENERAL DEL DERECHO CIVIL ESPAÑOL* 41 (1983).

disorder of the existing legislation.⁸⁷ For Castile, some of those compilations⁸⁸ were: the *Ordenamiento de Montalvo* (1484),⁸⁹ the *Libro de Bulas* (1503),⁹⁰ the *Nueva Recopilación* (1567),⁹¹ and the *Novísima Recopilación* (1805).⁹²

During the second decade of the nineteenth century, ideas of codification reached Spain and a more ambitious project for re-elaboration of the civil law in a systematic legal body or code began.⁹³ Until then, Spain had been behind in the codification endeavors. While Spain was drafting its last compilation in 1805 (the *Novísima Recopilación*), France had already enacted the *Code Napoléon* in 1804 and Louisiana would enact its Digest in 1808. A first reference to the need for a Spanish civil code can be found in article 258 of the Spanish Constitution of Cadiz (1812). The Spanish constitutions that followed in 1837, 1869, and 1876 also included references to the need for codification.⁹⁴ The text of article 258 of the Constitution of Cadiz read: "The Criminal, Commercial and Civil Codes will be the same for all the

87. Altamira, *supra* note 85, at 694.

88. See generally JOHN THOMAS VANCE, THE BACKGROUND OF HISPANIC-AMERICAN LAW LEGAL SOURCES AND JURIDICAL LITERATURE OF SPAIN (1943).

89. Alonso Díaz de Montalvo was entrusted by the Catholic Kings of Castile to elaborate the first general recompilation. It included all the Court rules since the *Ordenamiento de Alcalá de Henares*, pragmatics, royal ordinances, and some chapters of the *Fuero Real*. See 1 LEVAGGI, *supra* note 12, at 142.

90. Under the supervision of Juan Ramírez, the *Libro de las Bulas* included for the first time all the laws without being abstracted or integrated with others. It also included all the royal provisions regarding good governance and administration of justice. See *id.* at 143.

91. King Felipe II enacted a work of Bartolomé de Atienza that completed a work by Alonso Díaz de Montalvo, which had been ordered by the text of the codicil of Queen Isabel of Castile. It was divided into nine books and included approximately 4,000 laws. See *id.* at 143. Between 1567 and 1777, the *Nueva Recopilación* was re-published from time-to-time to include the new dispositions. See 1 BRUTAU, *supra* note 45, at 33.

92. The work in twelve books, by Juan de la Reguera y Valdelomar, had the objective of compiling the new dispositions together with the ones of the *Nueva Recopilación* in a methodological body of legislation. Nevertheless, the dispersion of legal norms subsisted because the derogation of previous laws was not procedurally effective. 1 LEVAGGI *supra* note 12, at 144.

93. VALDECASAS, *supra* note 86, at 41.

94. 1 BRUTAU, *supra* note 45, at 35.

Monarchy; notwithstanding the changes that the legislative body [i.e., Corte] may make according to particular circumstances.”⁹⁵

The need for codification encouraged the drafting of several civil code projects for Spain. Initially, in 1821, an appointed commission drafted an incomplete first civil code project. In 1823, a civil code project by Pablo Gorosábel, strongly inspired by the *Code Napoléon*, was published. Later, in 1833, Manuel Cambronero was appointed to draft a civil code project. His work was completed by Tapia, Vizmanos, and Ayuso in 1836,⁹⁶ and included 2,458 articles.⁹⁷ By Royal Decree (*Real Decreto*) on August 19th, 1843,⁹⁸ a General Codifying Commission (*Comisión General de Codificación*) was created.⁹⁹ One of the offices of the *Comisión General de Codificación* was dedicated exclusively to civil law; and by January 31st, 1846, it had fully drafted the First and Second Books and part of the Third Book of the Spanish Project.¹⁰⁰ On September 11th, 1846 the members of that office were replaced by new members who worked under the presidency of Florencio García Goyena.¹⁰¹ Those new members continued drafting the Third Book and completed the work on May 8th, 1851.¹⁰² The Spanish Project, when completed, had 1,992 articles¹⁰³ and was said to follow the model of the *Code Napoléon*.¹⁰⁴

The Spanish government knew the seriousness of the reforms that the Spanish Project would initiate in the areas of family law

95. CONST. CÁDIZ art. 258 (1812) (author's translation), available at <http://www.cervantesvirtual.com/servlet/SirveObras/02438387547132507754491/index.htm> (“El Código civil y criminal y el de comercio serán unos mismos para toda la Monarquía, sin perjuicio de las variaciones, que por particulares circunstancias podrán hacer las Cortes.”).

96. 1 BRUTAU, *supra* note 45, at 35.

97. 6 LORENZO ALIER ET AL., ENCICLOPEDIA JURÍDICA ESPAÑOLA 2 (1911).

98. 1 FELIPE SÁNCHEZ ROMÁN, ESTUDIOS DE DERECHO CIVIL 528 (1899).

99. 1 GARCÍA-GALLO, *supra* note 16, at 483.

100. 6 ALIER ET AL., *supra* note 97, at 2.

101. The complete list of contributors included Bravo Murillo, Luzuriaga, Sánchez Puy, Alvarez, Cortina, García Gallardo, Ortiz de Zúñiga, Pérez Hernández, Ruiz de la Vega, Seijas Lozano, Vila, and Vizamano. *Id.*

102. JOSÉ MARÍA ANTEQUERA, HISTORIA DE LA LEGISLACIÓN ESPAÑOLA 488 (1874). See also 6 ALIER ET AL., *supra* note 97, at 2.

103. 4 GOYENA, *supra* note 4, at 341.

104. 1 GARCÍA-GALLO, *supra* note 16, at 483.

and by overruling the regional laws (*derecho foral*)¹⁰⁵ of Aragon, Cataluña, and Navarra. It therefore enacted a Royal Order (*Real Orden*) on June 12th, 1851¹⁰⁶ providing for the publication of the Spanish Project, the encouragement of comments from courts and specialists, and the suspension of the Spanish Project's effective date. Many comments were submitted and the Spanish Project was put on hold.¹⁰⁷

The codification movement found opposition in the regions (*provincias*)¹⁰⁸ with *derechos forales*. As that opposition was difficult to overcome, a solution was sought in the enactment of special laws that tried to solve the need of codification—even without reaching a unique body of law or code.¹⁰⁹ Some of the special laws enacted were the Public Notary Law (*Ley del Notariado*) of 1862, the Law of Waters (*Ley de Aguas*) of 1866, the Law of Civil Law Marriage (*Ley de Matrimonio Civil*) of 1870, the Law of Civil Registry (*Ley de Registro Civil*) of 1870,¹¹⁰ the Law of Expropriations (*Ley de Expropiación Forzosa*), the Law of Hunting (*Ley de Caza*), and the Law of Intellectual Property (*Ley de Propiedad Intelectual*).¹¹¹ Another method used to solve that opposition was to include representatives of the *provincias* with *derecho foral* interests in the Office of the *Comisión General de Codificación*.¹¹² A final attempted solution came with the enactment of a Law of Basic Standards (*Ley de Bases*)¹¹³ on May 11th, 1888. The *Ley de Bases* provided the codifiers with twenty-

105. A *Derecho Foral* is a local law specifying the special civil law rules of a particular autonomous community. A *Derecho Foral* covers only specific areas of civil law, and the remaining areas are covered by the Civil Code. See CHARLOTTE VILLIERS, *THE SPANISH LEGAL TRADITION: AN INTRODUCTION TO THE SPANISH LAW AND LEGAL SYSTEM* 109 (1999).

106. 1 ROMÁN, *supra* note 98, at 529.

107. ANTEQUERA, *supra* note 102, at 489.

108. *Provincias* are geographic subdivisions of governmental administration. M.C. Mirow, *Latin American Legal History: Some Essential Spanish Terms*, 12 LA RAZA L.J. 43, 77 (2001).

109. 1 DIEZ-PICAZO & GULLON, *supra* note 13, at 64.

110. *Id.*

111. 1 CALIXTO VALVERDE Y VALVERDE, *TRATADO DE DERECHO CIVIL ESPAÑOL* 162 n.3 (1935).

112. 1 DIEZ-PICAZO & GULLON, *supra* note 13, at 65.

113. 1 JOSÉ MARÍA MANRESA Y NAVARRO, *COMENTARIOS AL CÓDIGO CIVIL ESPAÑOL* 1 (1924).

seven standards (*bases*) to follow when drafting the Civil Code for Spain.¹¹⁴ The *Ley de Bases* in its first *base* read:

The Civil Code will find grounding in the Spanish Project, because it includes the reasons and main thoughts of the civil institutions of the historical national law. Therefore, this first Body of our civil codification will solely have the intention to regulate, clarify and harmonize the dispositions of our laws¹¹⁵

The Office of the *Comisión General de Codificación* started to work according to those standards, finishing their work shortly.¹¹⁶ A *Real Decreto* dated February 11th, 1889 stated that the Civil Code would take effect on May 1st, 1889;¹¹⁷ and a second *Real Decreto* of October 6th, 1888 ordered the publication of the Civil Code.¹¹⁸ Even after May 1st, 1889, there were ten *provincias* including Aragón, Cataluña, Mallorca, Navarra, and Vizcaya that continued to be subject to *derechos forales*. The remaining thirty-nine regions were ruled by the Civil Code.¹¹⁹

III. THE *CONCORDANCIAS* OF FLORENCIO GARCÍA GOYENA

Although the Spanish Project never reached the status of law, it was a cornerstone for the Civil Code of Spain of 1889. It was also followed by one of the most important Spanish language scholarly legal productions of the nineteenth century: *Concordancias, Motivos y Comentarios del Código Civil Español* (the “*Concordancias*”).

In 1852, Florencio García Goyena,¹²⁰ who had been vice president of the *Comisión General de Codificación*, found

114. *Id.* at xx.

115. *Id.* at 3 (author’s translation) (“El Código tomará por base el proyecto de 1851 en cuanto se halla contenido en éste el sentido y capital pensamiento de las instituciones civiles del derecho histórico patrio, debiendo formularse, por tanto, este primer Cuerpo legal de nuestra codificación civil sin otro alcance y propósito que el de regularizar, aclarar y armonizar los preceptos de nuestras leyes . . .”).

116. 1 DIEZ-PICAZO & GULLON, *supra* note 13, at 68.

117. 1 MANRESA Y NAVARRO, *supra* note 113, at 17.

118. 1 DIEZ-PICAZO & GULLON, *supra* note 13, at 68.

119. 1 ROMÁN, *supra* note 98, at 510.

120. For additional information (in Spanish) regarding García Goyena, see <http://www.xtec.es/~jrovira6/bio/gargoyen.htm> (last visited Feb. 2, 2008).

grounding for the publication of the *Concordancias* in the discussions and debates of the Office.¹²¹ The intent of the *Concordancias* was to include the legal-historical backgrounds for each article of the Spanish Project. The letter of transmission of the *Concordancias* read:

that in conjunction with the drafting of the Civil Code [i.e., the Spanish Project], Mr. Florencio García Goyena has drafted a book that contains the history, comparative study, and motives for each article, interpreting and determining, solution in the spirit of those studies, various issues that probably would arise in its application. That interpretation and solution may be considered authentic, for they were reached after discussion with and approval of the Office of the *Comisión General de Codificación*.¹²²

A. Structure of the *Concordancias*

The *Concordancias* guided the reader through the text of the Spanish Project. The text of the Spanish Project was completely transcribed and scholarly analysis followed each of its 1,992 articles. The work was presented in four volumes. The first three volumes included appendices in which scholarly analyses were expanded.¹²³ Its fourth volume included both an alphabetical index of the topics covered throughout the four volumes¹²⁴ and an outline of the Spanish Project.¹²⁵

The Spanish Project followed the structure of the *Code Napoléon*.¹²⁶ It contained a Preliminary Title "Of laws [legislative

121. 1 ROMÁN, *supra* note 98, at 529.

122. 1 GOYENA, *supra* note 4, at 5 (author's translation) ("que simultáneamente con el Código ha formado el señor don Florencio García Goyena una obra que contiene la historia, el exámen comparado y los motivos de cada uno de los artículos, interpretando y resolviendo en el espíritu de los mismos algunas cuestiones que probablemente se suscitarán en su aplicacion. Esta interpretacion y resoluciones pueden considerarse auténticas, por haberse hecho prévia discusion y con aprobacion de la Seccion . . .").

123. Volume 1 included appendices 1 through 3, volume 2 included appendices 4 through 13, and volume 3 included appendix 14.

124. 4 GOYENA, *supra* note 4, at 361-479.

125. *Id.* at 345-58. An outline of the Spanish Project is reprinted *infra* appendix B.

126. The 2,281 articles of the *Code Napoléon* were divided into: (1) Preliminary Title "Of the publication, of the effects, and of the application of

acts] and their effects, and of the general rules for their application" (*De las leyes y sus efectos, y de las reglas generales para su aplicación*). The Preliminary Title was followed by three books: (1) Book I "Of persons" (*De las personas*); (2) Book II "Of the division of things and of ownership" (*De la división de los bienes y de la propiedad*); and (3) Book III "Of the modes of acquiring ownership" (*De los modos de adquirir la propiedad*). Each book was divided into titles, chapters, sections, and where relevant, paragraphs.

García Goyena explained, in his own words, the reasons why he gave such a title to his scholarly production. He said that each article of the Spanish Project would include a reference to corresponding provisions of other legislative works (*concordancias*), motives (*motivos*), and commentaries (*comentarios*).¹²⁷ Initially, each article of the Spanish Project would include a paragraph with references to corresponding provisions that included explanations of what the Roman law said, followed by references to Spanish compilations (starting with the *Fuero Juzgo*)¹²⁸ and all important modern civil codes. That way, he said, the reader would have almost universal knowledge of the legislation on that topic with just a simple glance.¹²⁹

Each article of the Spanish Project would also have a paragraph dedicated to motives. He considered motives the most useful and

laws [legislative acts] in general" (*De la publication, des effets et de l'application des lois en général*); (2) Book I "Of persons" (*Des personnes*); (3) Book II "Of things and the different modifications of ownership" (*Des biens, et des différentes modifications de la propriété*); and (4) Book III "Of the different ways of acquiring ownership" (*Des différentes manières dont on acquiert la propriété*). In addition, each book was divided into titles, chapters, sections, and, where relevant, paragraphs. For an outline of the *Code Napoléon*, see CODE CIVIL DES FRANÇAIS, ÉDITION ORIGINALE ET SEULE OFFICIELLE 563–79 (1804).

127. See *infra* appendix A for an example of an article of the *Concordancias*.

128. The *Fuero Juzgo* was a thirteenth-century free translation into Castilian of the *Vulgatas* (i.e., a mixed drafting of the *Liber Iudiciorum* and the *Etimologías* of Saint Isidoro of Seville). See 1 LEVAGGI, *supra* note 12, at 48.

129. 1 GOYENA, *supra* note 4, at 9 ("Al pié de cada artículo obra un epitome ó resumen de lo que sobre su tenor se halla dispuesto en el Derecho Romano, citando siempre y copiando muchas veces sus leyes; siguen nuestros códigos pátrios desde el Fuero Juzgo, y todos los modernos de mas nombradía; es decir, que á un simple golpe de vista se descubrirá la legislacion, que puede llamarse universal, sobre la materia del artículo, y esto es lo que yo comprendo en la palabra concordancias.").

noble aspects of the study of legislation. That study, he believed, was generally related to the study of history and showed the origins, reasons, and spirit that would facilitate an understanding of the law. The motives would show the reader why the provisions of one code were preferred over that of another or why they departed from all.¹³⁰

Finally, each article of the Spanish Project would include a closing paragraph with commentaries. The commentaries were derived from the spirit of the article of the Spanish Project under analysis and could also help solve issues that arose in the course of applying the text of the article. In addition, the commentaries were also the authentic opinion of the Office, as they were a result of the debate within the Office while drafting the text.¹³¹

García Goyena made references to the several civil codes and legislations considered in preparing the text, the motives involved, and the commentaries. Among those references cited frequently were the following: the Louisiana Civil Code, the Civil Code of Austria, the Civil Code of Bavaria, the Civil Code of Naples, the Civil Code of Prussia, the Civil Code of Sardinia, the Civil Code of the Netherlands, the Civil Code of Vaud, the *Code Napoléon*, the Council of Trent, the *Corpus Juris Civilis*, the *Fuero Juzgo*, the *Fuero Real*, the Institutes of Gaius, *Las Siete Partidas*, the *Novísima Recopilación*, the Project of Spanish Civil Code of 1821, the *Recopilación*, the Spanish Constitution of 1837, and the Civil Code of Wurttemberg.¹³²

130. *Id.* at 9 ("Vienen luego los motivos. 'Porque el saber de las leyes, segun la bella expresion de nuestra ley de Partida, aunque tomada de otra romana, non es tan solamente en aprender é decorar las letras dellas, mas el verdadero entendimiento dellas.' Esta es la parte mas noble y útil del estudio de la legislacion, y frecuentemente se halla enlazada con su historia: sabiendo el origen, las causas y fines de al ley, en una palabra, su espíritu, no ha de ser dificil aplicarla con acierto aun á los casos que á primera vista aparezcan dudosos: en los motivos se descubrirá tambien por qué se ha dado la preferencia á un código sobre los otros, ó nos habemos separado de todos.").

131. *Id.* at 9-10 ("Los comentarios no son sino consecuencias y aplicaciones del espíritu del artículo: en ellos se notan los puntos hasta ahora dudosos y que dejan ya de serlo por el artículo; se previenen y resuelven, segun el espíritu del mismo, algunas cuestiones que probablemente se suscitarán en la práctica. Sobre esta parte de la obra nada puedo añadir á lo que la Seccion dijo al Gobierno en su oficio de 5 de mayo último. 'Esta interpretacion y resoluciones pueden considerarse auténticas, por haberse hecho prévia discusion y aprobacion de la Seccion.'").

132. See generally *id.*

The works that García Goyena referred to in his *Concordancias* are similar to the ones that Saint-Joseph included in his *Concordance*.¹³³ By 1843, Fermín Verlanga Huerta and Juan Muñiz Miranda had translated the *Concordance* of Saint-Joseph into Spanish,¹³⁴ and in Spain, that work was considered useful for educational purposes.¹³⁵ Therefore, it has been said that García Goyena had access to the text of all those civil codes by means of the *Concordance* of Saint-Joseph.¹³⁶

B. References to the Louisiana Civil Code

The Louisiana Civil Code was mentioned in several comments to articles of the *Concordancias*. In total number of references, it competed with the *Code Napoléon*, the Civil Code of the Netherlands, and the Civil Code of Vaud. The references were mixed, as they sometimes mentioned Louisiana as a positive source of inspiration and at others mentioned that the Louisiana provision was different from the path chosen by Spain. Appendix C provides a unique and complete description of the articles and areas of law from the Louisiana Civil Code that are mentioned in the *Concordancias*.

1. Direct References

Throughout the *Concordancias*, García Goyena expressly mentioned 1,103¹³⁷ of the 3,522 articles that comprised the Louisiana Civil Code. In some cases, the references were merely to article numbers. For example, article 1440 of the *Concordancias* read: "The buyer assumes all the rights of the seller, and acquires, through prescription, against the real owner and against anybody who pretends to claim a right or mortgage

133. See generally ANTHOINE DE SAINT-JOSEPH, *supra* note 5.

134. FORTUNÉ ANTHOINE DE SAINT-JOSEPH, *CONCORDANCIA ENTRE EL CÓDIGO CIVIL FRANCES, Y LOS CODIGOS CIVILES ESTRANEROS* (D.F. Verlanga & D.J. Muñiz Miranda trans., 1843).

135. VÍCTOR TAU ANZOÁTEGUI, *LA CODIFICACION EN LA ARGENTINA* (1810–1870) 286 (1977).

136. Rolf Knütel, *Influences of the Louisiana Civil Code in Latin America*, 70 TUL. L. REV. 1445, 1451 (1996).

137. See *infra* app. C.

upon the thing sold.”¹³⁸ In the comments to that article, García Goyena referred to article “1665 of the Code Napoleon, 1511 of Naples, 1670 of Sardinia, 1561 of the Netherlands, and 2551 of Louisiana.”¹³⁹ In other cases, García Goyena even transcribed some segments of the articles of the Louisiana Civil Code. For example, the comment to article 620 of the *Concordancias* read: “Article 944 of Louisiana says: ‘For the capacity or incapacity to inherit *ab intestato* . . . the time of opening the succession has to be taken into account.’”¹⁴⁰ Finally, the *Concordancias* also included references to complete units (i.e., books, titles, chapters, sections, and paragraphs) of the Louisiana Civil Code. For example, the comment to article 1558 of the *Concordancias* read: “The Code of Louisiana dedicates Chapter 1, Title 10 of Book 3 to that kind of annuity [censo], and covers the topic in a more lucid manner.”¹⁴¹

2. General References

García Goyena made general references to the Louisiana Civil Code in twenty-four scholarly comments of the *Concordancias*. Specifically, he did not mention an exact article or unit of the Louisiana Civil Code in those comments, but just said “Louisiana.” For example, the comment to article 963 of the *Concordancias* read in the relevant part: “nevertheless, in this sense, the Codes of Sardinia, Naples, Vaud, and Louisiana, copy the Code Napoleon.”¹⁴²

138. 3 GOYENA, *supra* note 4, at 417 (author’s translation) (“Artículo 1440 El comprador sucede en todos los derechos del vendedor, y adquiere por prescripcion, tanto contra el verdadero dueño, como contra los que pretenden tener derecho ó hipoteca sobre la cosa vendida.”).

139. 3 *Id.* at 417 (author’s translation) (“1665 Frances, 1511 Napolitano, 1670 Sardo, 1561 Holandes, 2551 de la Luisiana.”).

140. 2 *Id.* at 71 (author’s translation) (“El artículo 944 de la Luisiana dice: ‘Para la capacidad o incapacidad de heredar *ab intestato* (nótese estas palabras), se ha de atender al tiempo de abrirse la sucesion.’”).

141. 3 *Id.* at 501 (author’s translation) (“El Código de la Luisiana dedica á esta especie de censo el capítulo 1, título 10, libro 3, y lo trata con la mayor lucidez.”).

142. 3 *Id.* at 308 (author’s translation) (“[S]in embargo, los Códigos Sardo, Napolitano, de Vaud y de la Luisiana, copian en esto al Frances.”).

3. Cross-References

Due to the interaction of the different articles of the *Concordancias*, García Goyena could redirect the reader to previous comments to other articles of the *Concordancias*. For example, in the comment to article 70 of the *Concordancias*, he wrote: “the same foreign articles mentioned in the previous [comment].”¹⁴³ Also, the comment on article 69 read: “It comes from articles 205 and 207 of the Code Napoleon; 195 and 196 of Naples; 376 and 378 of the Netherlands; 118 and 120 of Sardinia; 205 and 246 of Louisiana; and 107 and 109 of Vaud.”¹⁴⁴ These cross-references opened the door for the inclusion of the Louisiana Civil Code as a reference to other articles of the *Concordancias* that did not expressly include a reference.

4. Miscellaneous References

García Goyena mentioned on several occasions the appropriateness of the text of the Louisiana Civil Code. For example, the comment to article 702 of the *Concordancias* read: “[This article] is article 1628 of the Code of Louisiana, which seems very much in accordance to reason and law.”¹⁴⁵ In addition, the comment to article 1023 of the *Concordancias* read: “before, this article was vaguer and more diffuse: it was replaced, because of its clarity and simplicity, by article 1955 of Louisiana.”¹⁴⁶ Finally, article 1685 of the *Concordancias* read:

article 2927 of Louisiana adds: “The depository cannot withhold the thing deposited under pretext of a debt that the

143. 1 *id.* at 84 (author’s translation) (“Los mismos artículos extranjeros citados en el anterior.”).

144. 1 *Id.* at 84. (author’s translation) (“Resulta de los artículos 205 y 207 Franceses, 195 y 196 Napolitanos, 376 y 378 Holandeses, 118 y 120 Sardos, 205 y 246 de la Luisiana, 107 y 109 de Vaud . . .”).

145. 2 *id.* at 141 (author’s translation) (“Es el artículo 1628 del Código de la Luisiana, que parece muy conforme á razon y á derecho.”). Professor Herman provides a complete translation of article 702 in his 1982 study. See Herman, *supra* note 4, at 1523.

146. 3 GOYENA, *supra* note 4, at 58 (author’s translation) (“Este artículo venia antes mas vago y difuso: se le sustituyó por su claridad y sencillez el 1955 de la Luisiana.”). Professor Herman also provides this example in his 1982 study. See Herman, *supra* note 4, at 1515.

depositor owed him by any other cause than the one of the deposit, or by compensation": but this, although not expressed with so much particularity in the other Codes, is in its spirit as in our article, for they limit the retention on what is owed as a result of the deposit.¹⁴⁷

In several instances, however, García Goyena did not follow the text of the Louisiana Civil Code. For example, the comment to article 1580 of the *Concordancias* read that "article 2833 of Louisiana adds: 'but no partner will be liable for the loss that results from the act of the one in good faith': This I [García Goyena] do not approve, for there can be good faith with fault or negligence."¹⁴⁸

Even when the Spanish Project was subject to strong influence from the *Code Napoléon*, García Goyena tried to follow the Spanish cultural background, and the Louisiana Civil Code helped in that process. For example, article 1328 of the *Concordancias* read: "Our article agrees exactly with article 2374 of Louisiana, and with the recompiled law 4, title 4, book 10 (103 del Estilo)."¹⁴⁹ Indeed, the prologue to the *Concordancias* read:

Also, through the *Concordancias* it will be noticed that some areas that seem innovations, copied from foreign Codes, such as "reduction of majority age," "patria potestad in favor of the mother, rather than the father" and others,

147. 4 GOYENA, *supra* note 4, at 100 (author's translation) ("[E]l 2927 de la Luisiana añade: 'El depo no puede retener la cosa depositada so pretesto de una deuda que el deponente le debiera por cualquier otra causa que la del depósito, ó por forma de compensacion:' pero esto, aunque no se exprese con tanta individualidad en los otros Códigos, está en su espíritu como en el de nuestro artículo, puesto que limitan la retencion a lo debido por razon del depósito.").

148. *Id.* at 14 (author's translation) ("[E]l 2833 de la Luisiana añade: 'pero ningun socio será responsable de la pérdida que acaezca á consecuencia de lo hecho por él de buena fé.' Lo que no apruebo, porque puede haber buena fé con culpa ó negligencia."). Professor Herman also provides this example in his 1982 study. See Herman, *supra* note 4, at 1516.

149. 3 GOYENA, *supra* note 4, at 334 (author's translation) ("Nuestro artículo concuerda exactamente con el 2374 de la Luisiana, y con la ley recopilada 4, título 4, libro 10 (103 del Estilo)"). "The '*Leyes del Estilo*' were enacted about 1310. They consisted of 252 individual laws which dealt with forms and types of judicial proceedings. They were considered of sufficient importance to warrant a commentary, written by Cristóbal de la Paz." KATE WALLACH, BIBLIOGRAPHICAL HISTORY OF LOUISIANA CIVIL LAW SOURCES ROMAN, FRENCH AND SPANISH 65 (1955).

are but the primitive and pure Spanish legislation, included in our old *Fueros*, and some of them effective today

Because it is convenient to note that, one of the main bases adopted by the general Commission was “not to innovate, except by necessity or for evident utility.”¹⁵⁰

5. *Overall Impact*

Appendices B and C of this article show that the Louisiana Civil Code occupied an important place in the drafting of the Spanish Project and that the drafters in Spain considered—by following or rejecting—the Louisiana text. The Spanish Project made references to the Louisiana text for almost all areas of law that were covered in it. Among the legal dispositions not referred to in the Spanish Project, and that existed in the Louisiana Civil Code, it is possible to mention: (1) fixing the limits of and surveying lands; (2) new works, the erection of which can be stopped or prevented; (3) judicial sale; (4) compulsory transfer of property; (5) giving in payment; (6) aleatory contracts; (7) respite; (8) mortgages; (9) arbitration; (10) antichresis; (11) partnership in commendam and commercial partnerships; and (12) corporations.

In addition, the impact of the Louisiana text was reflected through the following statistics: (1) 1,103 articles of the Louisiana Civil Code were mentioned in the comments to the 1,992 articles of the Spanish Project; (2) twenty-four comments to the Spanish Project made general references to the Louisiana Civil Code; (3) the structure of the Louisiana Civil Code and the Spanish Project were almost identical, and even the names of many books, titles, chapters, sections, and paragraphs were the same; and (4) only eight titles, thirty-two chapters, twenty-four sections, twenty-nine paragraphs, and one preliminary title of the Louisiana Civil Code were not mentioned in the comments to the Spanish Project.

150. 1 *id.* at 10 (author’s translation) (“Tambien se echará de ver por las concordancias, que algunas de las que al pronto parecen innovaciones, copiadas de Códigos extrangeros, tales como el ‘acortamiento de la mayor edad,’ ‘la patria potestad de la madre en defecto del padre’ y otras, no son sino la primitiva y pura legislacion española, consignada en nuestros *Fueros* antiguos, y alguno de ellos hoy vigente. Porque conviene que se sepa que una de las principales bases adoptadas por la Comision general, fúe ‘no innovar sino por necesidad, ó evidente utilidad.’”).

C. *Influence of the Concordancias*

Both in Spain and Latin America,¹⁵¹ the *Concordancias* were a source of inspiration and a way of spreading the text of the Louisiana Civil Code.¹⁵² For Spain, the Spanish Project had been included in the first standard (*base*) and had been one of the sources of inspiration that the codifiers followed in drafting the Spanish Civil Code of 1889.

In Latin America, the *Concordancias* were an inspiration for codifiers such as Dalmacio Vélez Sarsfield and Andrés Bello. The Civil Code of Argentina of 1871 found inspiration in the *Concordancias*. Dalmacio Vélez Sarsfield was appointed to draft a civil code for Argentina in 1864.¹⁵³ While drafting what would later become the Civil Code of Argentina of 1871, he made express references to the *Concordancias*, both in the footnotes to the different articles¹⁵⁴ and in the letter of remission of the First Book of the Civil Code to the Minister Eduardo Costa. The influence of the *Concordancias* also extended to Paraguay, which adopted the Civil Code of Argentina in 1875.¹⁵⁵ The letter of transmission of the First Book of the draft that Vélez Sarsfield sent to Eduardo Costa on June 21st, 1865, read:

For this work I have considered all the codes published in Europe and America, and the comparative legislation of Mr. Seoane. I have used mainly the Spanish Project of Mr. Goyena, the Code of Chile, that much surpasses the European codes and, mainly, the project of [the] civil code

151. IGNACIO GALINDO GARFIAS, *DERECHO CIVIL: PRIMER CURSO* 107 (1979).

152. It is worth mentioning that some codifiers in Latin America (e.g., Vélez Sarsfield) mention the Louisiana Civil Code as a source for their drafts, even when they also mention the *Concordancias*.

153. 2 ABELARDO LEVAGGI, *MANUAL DE HISTORIA DEL DERECHO ARGENTINO* 266 (1987).

154. For example, the footnote to article 186 of the Argentine Civil Code of 1871 read: "Project of Goyena, article 60. Against it: Law 8, title 15, book 5 of the Roman Code and Law 17, title 11 of the Fourth Partida." (author's translation) ("Proyecto de Goyena, art. 60. En contra: L. 8, tit. 15, lib. 5, cód. romano y L. 17, tit. 11, Part. 4ª."). See Law No. 340, Sept. 29, 1869, [I] A.D.L.A. 526.

155. 1 LEVAGGI, *supra* note 12, at 241.

that Mr. Freitas is working on for Brazil, from which I have borrowed many articles.

Regarding the legal doctrines that I believed necessary to convert into laws for the First Book, my main guides have been the German juriconsults Savigny and Zachariæ, the great work of Mr. Serrigny on administrative law of the Roman Empire, and the work of Story, *Conflicts of Laws*.¹⁵⁶

The Civil Code of Chile of 1855 also found inspiration in the *Concordancias*. When drafting the Civil Code of Chile, the Venezuelan jurist Andrés Bello followed closely the provisions of the *Concordancias*.¹⁵⁷

The Civil Code of Chile was also a source of inspiration for many Latin American codification endeavors. In present day Colombia, starting in 1858, several states (e.g., Santander and Cundinamarca) adopted the Civil Code of Chile.¹⁵⁸ Later, due to an initiative of President Murillo Toro,¹⁵⁹ the entirety of Colombia adopted the Civil Code of Chile in 1873.¹⁶⁰ Ecuador adopted the Civil Code of Chile in 1861 and, in its fifth redaction of 1950, modified many points of the original (e.g., rights of natural children and adoption).¹⁶¹ In El Salvador, the Civil Code of Chile was adopted in 1859¹⁶² and modified in 1912.¹⁶³ Honduras adopted the Civil Code of Chile in 1880¹⁶⁴ and modified it in 1906,

156. ABELARDO LEVAGGI, DALMACIO VÉLEZ SARSFIELD, JURISCONSULTO 310 (2005) (author's translation) ("Para este trabajo, he tenido presente todos los códigos publicados en Europa y América, y la legislación comparada del Sr. Seoane. Me he servido principalmente del Proyecto de Código Civil para España del Sr. Goyena, del Código de Chile, que tanto aventaja a los códigos europeos y, sobre todo, del proyecto de código civil que está trabajando para el Brasil el Sr. Freitas, del cual he tomado muchísimos artículos. Respecto a las doctrinas jurídicas que he creído necesario convertir en leyes en el primer libro, mis guías principales han sido los juriconsultos alemanes Savigny y Zachariae, la grande obra del Sr. Serrigny sobre el Derecho administrativo del Imperio Romano, y la obra de Story, *Conflicts of Laws*.").

157. 1 VICTORIO PESCIO VARGAS, MANUAL DE DERECHO CIVIL 115 (1978).

158. 1 SIMON CARREJO, DERECHO CIVIL 49 (1972).

159. 1 ARTURO VALENCIA ZEA, DERECHO CIVIL 39 (7th ed. 1979).

160. PAZOS, *supra* note 85, at 154.

161. 1 ZEA, *supra* note 159, at 80.

162. PAZOS, *supra* note 85, at 154.

163. 1 ZEA, *supra* note 159, at 80.

164. PAZOS, *supra* note 85, at 154.

with provisions taken from the *Code Napoléon* and the Spanish Civil Code of 1889.¹⁶⁵ Nicaragua adopted the Civil Code of Chile in 1871¹⁶⁶ and later replaced it with the Nicaraguan Civil Code of 1904. This 1904 Civil Code was inspired by the *Code Napoléon*, the Civil Code of Uruguay, and the Civil Code of Chile.¹⁶⁷ In Panama, the Civil Code of Chile was effective until 1916. Since that time, it has been replaced by a new civil code inspired by the Spanish Civil Code of 1889, the *Code Napoléon*, and others.¹⁶⁸ Venezuela also adopted the Civil Code of Chile in 1862.¹⁶⁹ The Civil Code of Chile also had influence on the civil codes of Argentina (1871), Costa Rica (1886), Guatemala (1877), Mexico (1870), Paraguay (1875), Uruguay (1868), and in the project for Brazil¹⁷⁰ by Teixeira de Freitas, started in 1859.¹⁷¹

The Civil Code of Mexico of 1870 also found inspiration in the *Concordancias*. Justo Sierra had already begun work on a project of a civil code for Mexico in 1859. That project was grounded mainly in the *Code Napoléon* and the *Concordancias*. From the 2,124 articles of the project, 1,887 articles came from the *Concordancias*.¹⁷² Additionally, the project of Justo Sierra was the main source for the Civil Code of Mexico of 1870, which was drafted by Jesús Terán.¹⁷³

The Civil Code of Uruguay of 1868 also found inspiration in the *Concordancias*. The Report drafted in 1867 by the Codifying Commission mentions as their sources, among others, Acevedo's project to create a civil code in 1852 and the *Concordancias*.¹⁷⁴ The Report read:

The codes of Europe, those of America, and specially the correctly praised code of Chile, the wisest commentators of

165. 1 ZEA, *supra* note 159, at 80.

166. PAZOS, *supra* note 85, at 154.

167. 1 ZEA, *supra* note 159, at 80.

168. *Id.*

169. PAZOS, *supra* note 85, at 154.

170. *Id.*

171. 2 ESPINOLA, *supra* note 8, at 531.

172. RODOLFO BATIZA, LOS ORIGENES DE LA CODIFICACIÓN CIVIL Y SU INFLUENCIA EN EL DERECHO MEXICANO 171 (1982).

173. GARFIAS, *supra* note 151, at 107; PAZOS *supra* note 85, at 160; 1 RAFAEL DE PINA, ELEMENTOS DE DERECHO CIVIL MEXICANO 82 (1975).

174. 1 ORESTES ARAÚJO ET AL., CÓDIGO CIVIL ANOTADO xxvii (1949). See PAZOS, *supra* note 85, at 161.

the Code Napoleon, the project of doctor Acevedo, the one of Mr. Goyena [Spanish Project], the one of Mr. Freitas, the one of doctor Vélez Sarsfield, have been the precedents upon which the work we have reviewed, discussed, and approved has been elaborated.¹⁷⁵

Some Latin American countries, on the other hand, did not find inspiration in the *Concordancias*, but found it rather in the Spanish Project. For example, Costa Rica took some provisions from the Spanish Project when drafting its Civil Code of 1886.¹⁷⁶ Peru, which enacted its civil code in 1852, contemplated some ideas that had been included in the Spanish Project.¹⁷⁷ Finally, the Spanish Civil Code of 1889, which was influenced by the *Concordancias*, took effect by a *Real Decreto* on July 24th, 1889, in the Philippines, Cuba, and Puerto Rico.¹⁷⁸ In Cuba, the Spanish Civil Code was replaced by a new civil code in 1987.¹⁷⁹ Finally, in Puerto Rico, the Spanish Civil Code was applied since 1898 unless the relevant provisions were inconsistent with the United States Constitution or applicable United States federal legislation.¹⁸⁰

IV. SUMMARY AND FINAL COMMENT

The *Concordancias* of García Goyena are a unique and monumental scholarly production that led the way for the Hispanic codification movements during the nineteenth century. The Louisiana Civil Code, because of its inclusion within the comments of the *Concordancias*, occupied a unique place in codification works for Spain and Latin America. That place has

175. 1 ARAÚJO ET AL., *supra* note 174, at xxiii (author's translation) ("Los Códigos de Europa, los de América, y con especialidad el justamente elogiado de Chile, los más sabios comentadores del Código Napoleón, el proyecto del doctor Acevedo, el del señor Goyena, el del señor Freitas, el del doctor Vélez Sarsfield, han sido los antecedentes sobre que se ha elaborado la obra que hemos revisado, discutido y aprobado.").

176. 1 GUSTAVO ADOLFO MEJIA RICART, *HISTORIA GENERAL DEL DERECHO E HISTORIA DEL DERECHO DOMINICANO* 251 (1942).

177. JORGE BASADRE, *HISTORIA DEL DERECHO PERUANO* 365 (1984).

178. *CÓDIGO CIVIL DE PUERTO RICO COMENTADO* 9 (1984).

179. ÁNGEL CARRASCO PERERA, *CÓDIGO CIVIL Y LEYES CIVILES CUBANAS* 10 (2000).

180. 1 EDUARDO VAZQUEZ BOTE ET AL., *DERECHO CIVIL DE PUERTO RICO* 129 (1972).

been proved with the help of a study of the content and structure of the *Concordancias*, but further research and analyses are necessary to determine the substantive impact that the Louisiana text could have had in the Hispanic codification works. This article has laid the foundation for that future work and has reflected the importance that studies of comparative law have in the drafting of civil codes.

A final comment that summarizes the spirit of the nineteenth century codification movements is provided by García Goyena:

Good laws are the greatest benefits that kings can provide for their people, and the most prevailing monument to their glory. The glory of belligerent kings disappears with the smoke and roar of battle and occupies a cold page of history; the glory of legislating kings increases in veneration and brilliance with the course of centuries.¹⁸¹

181. 1 GOYENA, *supra* note 4, at 3 (author's translation) ("Las buenas leyes son el mayor beneficio que los reyes pueden hacer á los pueblos, y el monumento mas imperecedero de su gloria: la de los reyes guerreros pasa con el humo y estruendo de las batallas para no ocupar luego sino una fria página en la historia; la de los reyes legisladores gana en veneracion y brillo con el transcurso de los siglos.").

In addition, Napoleon while in exile said: "My true glory is not that I have won 40 battles; Waterloo will blow away the memory of these victories. What nothing can blow away, what will live eternally, is my Civil Code." Alain Levasseur, *Code Napoleon or Code Portalis?*, 43 TUL. L. REV. 762, 764 (1969), cited in Olivier Moréteau, *Codes as Straight-Jackets, Safeguards, and Alibis: The Experience of the French Civil Code*, N.C. J. INT'L. L. & COM. REG. 273, 278 (1995).

V. APPENDICES

A. *An Article of the Concordancias—Appendix A*

Appendix A includes a sample of a comment to an article of the Spanish Project.¹⁸² The translation of the text of the article of the Spanish Project is in italics and is followed by a translation of the comment of García Goyena. It is important to note that the work of García Goyena includes: (1) corresponding provisions of other legislative works (*concordancias*), (2) motives (*motivos*), and (3) commentaries (*comentarios*).

Article 105: In all the cases in which the husband challenges the legitimacy of the child, he must do so by judicial process within two months of having notice of the birth.

Article 316 of the French code indicates a one month period, if the husband is in the place of the birth, and of two, if he is absent, or after discovering the fraud, if the birth had not been revealed to him. Articles 154 of Sardinia, 238 of Naples, 166 of Vaud, 210 of Louisiana, and 311 of the Netherlands follow the French. Article 158 of Austria in all cases allows three months after having knowledge of the fact. Article 7 of Prussia, title 2, part 2, allows one year after the husband knew of the birth of the child.

The idea of the two last codes seemed preferable, because the period starts in all cases upon knowledge of the birth. Without such knowledge, the husband could not have claimed, and having knowledge, there are no reasons for differentiation between the two cases.

The periods of the Austrian and Prussian codes have been reduced, because in so sensitive a matter, no one keeps silent very long, and the uncertain status of the child should not be prolonged.

If the husband, knowing of the birth, allows the legal period to elapse, he will have recognized the child tacitly;

182. For another example, see Herman, *supra* note 4, at 1537.

but the claim or challenge must be *judicial*: the legitimacy of the child should not be subject to the vagueness and uncertainties of private opinions.¹⁸³

B. Outline of the Spanish Project—Appendix B

Appendix B includes a complete outline of the structure of the Spanish Project. It is presented with English translations and the original Spanish in italics. The English translations attempt to follow the wording used in the English version of the Louisiana Civil Code (even spelling mistakes). Some portions include words that are exact translations. In addition, in brackets, is given the numbers of the articles in the unit. These article numbers will enable the reader to cross-reference the contents of Appendix B and Appendix C. For easier reading, periods have been added after each unit title, English title, and Spanish title. These periods are not always included in the original texts.

183. 1 GOYENA, *supra* note 4, at 119 (author's translation). The Spanish text reads:

Artículo 105: En todos los casos en que el marido puede contradecir la legitimidad del hijo, deberá hacerlo en juicio dentro de dos meses, contados desde que tuvo noticia de su nacimiento

El 316 Frances señala el término de un mes, si el marido se encuentra en el lugar del nacimiento, y el de dos, si está ausente, ó despues del descubrimiento del fraude, cuando le ha sido ocultado el nacimiento. Siguen al Frances el 154 Sardo, 238 Napolitano, 166 de Vaud, 210 de la Luisiana y el 311 Holandes. El 158 Austriaco señala indistintamente tres meses despues de haber tenido conocimiento del hecho: el 7 Prusiano, título 2, parte 2, señala un año desde que el marido supo el nacimiento del hijo.

Ha parecido preferible el pensamiento de los dos últimos Códigos en cuanto á que el término no empiece á correr en todos los casos sino desde que se tuvo noticia del nacimiento. Sin esta noticia no pudo en ningun caso reclamar el marido, y teniéndola, no hay motivos de diferencia entre uno y otro caso.

Se ha abreviado el término de los Códigos Austriaco y Prusiano, porque en materia tan sensible nadie calla por mucho tiempo, y la incertidumbre del estado de los hijos no debe ser larga.

Si el marido, noticioso del nacimiento, dejase pasar el término legal, se entenderá que ha reconocido tácitamente al hijo; pero la reclamacion ó contradiccion deberá ser *judicial*: la legitimidad del hijo no debe quedar pendiente de lo vago é incierto de contradicciones privadas.

Preliminary Title. Of laws and their effects, and of the general rules for their application. (*De las leyes y sus efectos, y de las reglas generales para su aplicación.*)
[1–17]

Book I. Of persons. (*De las personas.*)

Title I. Of the distinction of persons. (*De los españoles y extranjeros.*)
[18–34]

Title II. Of dwelling and of domicile. (*De la vecindad y del domicilio.*)

Chapter I. Of dwelling. (*De la vecindad.*)
[35–37]

Chapter II. Of domicile. (*Del domicilio.*)
[38–46]

Title III. Of husband and wife. (*Del matrimonio.*)
[47]

Chapter I. Of the celebration of marriage. (*De la celebración del matrimonio.*)
[48–50]

Chapter II. How marriages may be contracted or made. (*De los requisitos civiles necesarios para la celebracion del matrimonio.*)
[51–56]

Chapter III. Of the respective rights and duties of married persons. (*De los derechos y obligaciones que nacen del matrimonio.*)

Section I. Of the rights and obligations between husband and wife. (*De los derechos y obligaciones entre marido y mujer.*)
[57–67]

Section II. Of the duties of parents towards their children, and of their obligations and that of other family members to provide each other alimony. (*De los deberes de los esposos para con sus hijos, y de su obligación y la de otros parientes a prestarse recíprocamente alimentos.*)
[68–73]

Chapter IV. Of the separation from bed and board. (*Del divorció.*)

Section I. Of the causes of separation from bed and board. (*De la naturaleza y causas del divorcio y reglas para pedirlo.*)
[74–80]

Section II. Of the provisional proceedings to which a suit for separation may give occasion. (*De las medidas provisionales consiguientes a la demanda de divorcio.*)
[81]

Section III. Of the effects of separation from bed and board. (*De los efectos del divorcio.*)
[82–88]

Chapter V. Of the dissolution and nullity of marriage. (*De la disolucion y nulidad del matrimonio.*)
[89–97]

Chapter VI. Of the way to prove marriage. (*Del modo de probar el matrimonio.*)
[98–100]

Title IV. Of father and child. (*De la paternidad y filiacion.*)

Chapter I. Of legitimate children. (*De los hijos legítimos.*)
[101–108]

Chapter II. Of the manner of proving legitimate filiation. (*Delas pruebas de la filiación de los hijos legítimos.*)
[109–117]

Chapter III. Of legitimation. (*De la legitimación.*)
[118–121]

Chapter IV. Of the acknowledgment of illegitimate children. (*Del reconocimiento de los hijos naturales.*)
[122–132]

Title V. Of adoption. (*De la adopción.*)
[133–141]

Title VI. Of minors. (*De la menor edad.*)
[142]

Title VII. Of parental authority. (*De la patria potestad.*)

Chapter I. Of the duties of parents towards their children. (*De los efectos de la patria potestad, respecto a los personas de los hijos.*)

[143–149]

Chapter II. Of the duties of parents with respect to the personal property of children. (*De los efectos de la patria potestad respecto a los bienes de los hijos.*)

[150–159]

Chapter III. Of the ways to end parental authority. (*De los modos de acabarse la patria potestad.*)

[160–169]

Chapter IV. Common dispositions regarding the previous articles. (*Disposiciones comunes a los artículos anteriores.*)

[170]

Title VIII. Of tutorship. (*De la tutela.*)

Chapter I. General dispositions. (*Disposiciones generales.*)

[171–176]

Chapter II. Of the tutorship by will. (*De la tutela testamentaria.*)

[177–180]

Chapter III. Of the tutorship by effect of law. (*De la tutela legítima.*)

[181–182]

Chapter IV. Of dative tutorship. (*De la tutela dativa.*)

[183–184]

Chapter V. Of the under-tutor. (*Del pro-tutor.*)

[185–189]

Chapter VI. Of family meetings. (*Del consejo de familia.*)

[190–201]

Chapter VII. Of the incapacity for, the exclusion from, and deprivation of tutorship. (*De las personas inhábiles para ser tutores, pro-tutores y vocales del consejo de familia y de su separacion.*)

[202–209]

Chapter VIII. Of the causes which dispense or excuse from the tutorship or under-tutorship. (*De las excusas de la tutela y pro-tutela.*)

[210–217]

Chapter IX. Of the administration of the tutor. (*De la administracion de la tutela.*)

[218–253]

Chapter X. Of the termination of the tutorship. (*De la estincion de la tutela.*)

[254]

Chapter XI. Of the administration of the tutor. (*De las cuentas de la tutela.*)

[255–266]

Chapter XII. Of tutorship of natural children. (*De la tutela de los hijos naturales.*)

[267–271]

Title IX. Of emancipation and adulthood. (*De la emancipación y de la mayor edad.*)

Chapter I. Of emancipation. (*De la emancipación.*)

[272–275]

Chapter II. Of adulthood. (*De la mayor edad.*)

[276–277]

Title X. Of interdiction and curatorship of persons incapable of administering their estates. (*De la curadoria.*)

[278–309]

Title XI. Of absentees. (*De los ausentes.*)

Chapter I. Of the provisional measures in case of absence. (*De las medidas provisionales en caso de ausencia.*)

[310–312]

Chapter II. Of the declaration of absence. (*De la declaracion de ausencia.*)

[313–317]

Chapter III. Of the effects of the declaration of absence. (*De los efectos de la declaracion de ausencia.*)

[318–321]

Chapter IV. Of the presumption of death of the absentee. (*De la presunción de la muerte del ausente.*)

[322–326]

Chapter V. Of the effects of absence upon the eventual rights which may belong to the absentee. (*De los efectos de la ausencia relativamente á los derechos eventuales del ausente.*)
[327–330]

Chapter VI. General dispositions. (*Disposiciones generales.*)
[331–333]

Title XII. Of the office of civil registry. (*Del registro del estado civil.*)

Chapter I. General dispositions. (*Disposiciones generales.*)
[334–347]

Chapter II. Of birth certificates. (*De las partidas de nacimiento.*)
[348–357]

Chapter III. Of certificates of recognition legitimacy of children. (*De las partidas de reconocimiento y legitimación de los hijos.*)
[358–359]

Chapter IV. Of marriage certificates. (*De las partidas de matrimonio.*)
[360–361]

Chapter V. Of death certificates. (*De las partidas de defunción.*)
[362–373]

Special disposition. (*Disposicion especial.*)
[374]

Chapter VI. Of the corrections in the registry. (*De la rectificacion del registro.*)
[375–378]

Book II. Of the division of things and of ownership. (*De la division de los bienes y de la propiedad.*)

Title I. Of the division of things. (*De la division de los bienes.*)

Preliminary disposition. (*Disposicion preliminar.*)
[379]

Chapter I. Of immoveables. (*De los bienes inmuebles.*)
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Section III. Of the effects of suretyship between sureties. (*De los efectos de la fianza entre los co-fiadores.*)

[1758-1760]

Chapter III. Of the extinction of suretyship. (*De la estincion de la fianza*)

[1761-1767]

Chapter IV. Of legal and judicial sureties. (*De la fianza legal y judicial*)

[1768-1770]

Title XVIII. Of pledge. (*De la prenda.*)

[1771-1781]

Title XIX. Of mortgage. (*De la hipoteca*)

Chapter I. General provisions. (*Disposiciones generales.*)

[1782-1786]

Chapter II. Of legal mortgages. (*De la hipoteca legal.*)

[1787-1790]

Chapter III. Of voluntary mortgages. (*De la hipoteca voluntaria.*)

[1791–1797]

Chapter IV. Of the effects of mortgages. (*De los efectos de la hipoteca.*)

Section I. Of the effects of mortgages with regard to the debtor and its property. (*De los efectos de la hipoteca con relación al obligado y sus bienes.*)

[1798–1807]

Section II. Of the effect of mortgages against third possessors. (*De los efectos de la hipoteca con relacion a los terceros poseedores.*)

[1808–1816]

Chapter V. How mortgages expire or are extinguished. (*De la estincion de la hipoteca.*)

[1817–1818]

Title XX Of the office of public registry (*Del registro público*)

Chapter I. General dispositions. (*Disposiciones generales.*)

[1819–1825]

Chapter II. Of acts subject to registration. (*De los títulos sujetos á inscripcion.*)

[1826–1831]

Chapter III. Of the persons that must and may require registration. (*De las personas que deben ó pueden requerir la inscripcion.*)

[1832–1844]

Chapter IV. Of the manner of registering. (*Del modo de hacer la inscripcion.*)

[1845–1857]

Chapter V. Of the effects of registration. (*De los efectos de la inscripcion.*)

[1858–1861]

Chapter VI. Of the termination of the registration. (*De la estincion de la inscripcion.*)

[1862–1866]

Chapter VII. Of the preventive annotation. (*De la anotacion preventive.*)

[1867–1876]

Chapter VIII. Of sub-registrations. (*De las sub-inscripciones.*)

[1877–1880]

Chapter IX. Of the administration of the office. (*De la teneduria del registro.*)

[1881–1889]

Transitory dispositions. (*Disposiciones transitorias.*)

Title XXI. Of obligations that are assumed without convention. (*De las obligaciones que se contraen sin convencion.*)

[1890]

Chapter I. Of quasi-contracts. (*De los cuasi-contratos.*)

[1891]

Section I. Of managing the affairs of another. (*De la agencia oficiosa de los negocios ajenos.*)

[1892–1894]

Section II. Of payment not due. (*Del pago de lo indebido.*)

[1895–1898]

Chapter II. Of obligations that are created because of crimes; or offenses. (*De las obligaciones que nacen de los delitos.*)

[1899]

Chapter III. Of obligations that are created because of fault or negligence; or quasi-offenses. (*De las obligaciones que nacen de culpa ó negligencia.*)

[1900–1905]

Title XXII. Of the judicial order to compel the compliance. (*Del apremio personal.*)

[1906–1919]

Title XXIII. Of privileges. (*De la graduacion de acreedores.*)

Chapter I. General provisions. (*Disposiciones generales.*)

[1920–1922]

Chapter II. Of the several kinds of privileges. (*De los privilegios.*)

[1923]

Section I. Of general privileges on all moveables and on non-mortgaged immovables. (*De los privilegios generales sobre todos los bienes muebles y sobre los inmuebles no hipotecados.*)

[1924]

Section II. Of general privileges on moveables. (*De los privilegios generales sobre bienes muebles.*)

[1925]

Section III. Of the privileges on particular moveables. (*De los privilegios especiales contra ciertos muebles.*)

[1926]

Section IV. Of special privileges on particular immoveables. (*De los privilegios especiales sobre ciertos bienes inmuebles.*)

[1927]

Chapter III. Of the classification of credits. (*De la clasificacion de los créditos.*)

[1928–1932]

Title XXIV. Of prescription. (*De la prescripcion.*)

Chapter I. General provisions. (*Disposiciones generales.*)

[1933–1945]

Chapter II. Of prescription by which property is acquired. (*De la prescripción considerada como medio de adquirir.*)

[1946–1952]

Chapter III. Of the prescription of ten or twenty years. (*De la prescripcion de la propiedad de bienes inmuebles ú otros derechos reales por el tiempo de 10 y 20 años.*)

[1953–1960]

Chapter IV. Of prescription of thirty years. (*De la prescripcion de treinta años.*)

[1961]

Chapter V. Of prescription of moveables. (*De la prescripcion de los bienes muebles.*)

[1962–1963]

Chapter VI. Of the prescription which operates as release from debt. (*De la prescripcion considerada como medio de libertarse.*)

Sole Section General dispositions. (*Disposiciones generales.*)

[1964–1965]

I. Of prescriptions of thirty, twenty and ten years. (*De las prescripciones de 30, 20 y 10 años.*)

[1966–1970]

II. Of other shorter prescriptions. (*De algunas prescripciones mas cortas.*)

[1971–1976]

III. General dispositions. (*Disposiciones generales.*)

[1977–1980]

Chapter VII. Of the causes which interrupt or suspend the course of prescription. (*De las causas que interrumpen ó suspenden el curso de la prescripcion.*)

Section I. Of the causes which interrupt the prescription. (*De las causas que interrumpen el curso de la prescripcion.*)

[1981–1990]

Section II. Of people against whom prescription operates. (*De las personas contra quienes corre la prescripcion.*)

[1991]

Final disposition. (*Disposicion final.*)

[1992]

C. Articles from the Louisiana Civil Code Cited in the Concordancias
—Appendix C

Appendix C reproduces the complete outline of the English version of the Louisiana Civil Code of 1825.¹⁸⁴ The exact words used in the Louisiana text have been transcribed, even the idiomatic expressions and spelling mistakes. The numbers in the left column correspond to the Louisiana sections, while the numbers and units (for example, Introduction to Chapter XII, Title VIII, Book I) in the right column are those of the Spanish Project sections that correspond to those of the Louisiana Civil Code. The symbol N/A (not applicable) has been used when no comment to the sections of the Spanish Project refer to that particular unit of the Louisiana Civil Code. For easier reading, periods have been added after each unit title and English title. These periods are not always included in the original text.

Preliminary Title. Of the general Definitions of Rights and the Promulgation of the Laws.

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Chapter 2. Of the publication of the Laws.

4	1
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7	2
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Chapter 3. Of the effects of Laws.

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Chapter 4. Of the application and construction of Laws.

N/A

Chapter 5. Of the repeal of Laws.

N/A

184. According to the text of the CIVIL CODE OF THE STATE OF LOUISIANA (1825).

Book I. Of Persons.

Title I. Of the distinction of Persons.

28 107

Title II. Of Domicil and the manner of changing the same.

N/A

Title III. Of Absentees.

Chapter 1. Of the Curatorship of absentees.

N/A

Chapter 2. Of the putting into provisional possession the heirs of an Absentee.

58 318

59 315

63 318

64 318

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72 324

74 325

75 326

76 331

Chapter 3. Of the effects of absence upon the eventual rights which may belong to the Absentee.

77 328

78 329

80 330

Chapter 4. Of the Effects of Absence respecting Marriage.

N/A

Chapter 5. Of the care of Minor Children where the Father has disappeared.

84 332

85 332

Title IV. Of Husband and Wife.

Chapter 1. On Marriage.

N/A

Chapter 2. How Marriages may be contracted or made.

99 52

100 51

Chapter 3. Of the Celebration of Marriages.

N/A

Chapter 4. Of the Nullity of Marriages.

119 93

120 93

Chapter 5. Of the respective Rights and Duties of Married Persons.

121 57

122 58

123 57, 59

124 63

125 62

126 64

127 64

129 64

131 67

132 66

Chapter 6. Of the Dissolution of Marriage.

N/A

Chapter 7. Of Second Marriages.

134 56

Title V. Of the Separation from Bed and Board.

Chapter 1. Of the Causes of Separation from Bed and Board.

136 76

Chapter 2. Of the proceedings of Separation from Bed and Board.

140 77

Chapter 3. Of the Provisional Proceedings to which a suit for separation may give occasion.

144 81, 84

145 81

146 81

147 81

148 81

Chapter 4. Of objections to the action of separation from bed and board.

149 80

Chapter 5. Of the Effects of separation from Bed and Board.

152 86

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155 82

Chapter 2. Of Free Servants.

N/A

Chapter 3. Of Slaves.

N/A

Title VII. Of Father and Child.

Chapter 1. Of Children in general.

N/A

Chapter 2. Of Legitimate Children.

Section 1. Of Legitimacy resulting from Marriage.

203 101

204 102

205 69

207 103

209 104

210 105

211 106

Section 2. Of the manner of proving legitimate filiation.

212 109

213 109

214 110

215 112

216 71, 112

Chapter 3. Of Illegitimate Children.

Section 1. Of Legitimation.

218 121

219 120

Section 2. Of the Acknowledgment of Illegitimate Children.

221 124, 191

223 Appendix 2, 123

224 130

226 Appendix 2, 127

229 131

Chapter 4. Of Adoption.

232 Introduction to Title V, Book I

Chapter 5. Of Paternal Authority.

Section 1. Of the Duties of Parents towards their legitimate Children, and of the Duties of legitimate Children towards their Parents.

233 143

234 144, 160

236 147

239 153

240 156

242 154

243 68

244 1269

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248 72

251 146

Section 2. Of the Duties of Parents toward their natural Children, and of the Duties of natural Children towards their Parents.

254 170

Title VIII. Of Minors, of their Tutorship, Curatorship and Emancipation.

Chapter 1. Of Tutorship.

Section 1. General Dispositions.

263 Introduction to Title VIII, Book I

Section 2 Of Tutorship by Nature

267 150

272 168

273 168

274 Introduction to Chapter XII, Title VIII, Book I

Section 3. Of the Tutorship by Will.

275 177

279 Introduction to Chapter XII, Title VIII, Book I

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282 181

283 513

286 282

Section 5. Of Dative Tutorship.

288 184

296 271

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300 185, 191, 195

303 188

304 1723

Section 7. Of Family Meetings.

308 1242

Section 8. Of the Causes which dispense or excuse from the Tutorship.

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315 210

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318 210

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320 215

Section 9. Of the Incapacity for, the Exclusion from, and Deprivation of the Tutorship.

322 202

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327 218, 236

329 224

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349 244, 245

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Chapter 2. Of the Curatorship of Minors.

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362	307

Chapter 3. Of Emancipation.

367	272
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371	162
374	275

Title IX. Of Persons Insane, Idiots and other persons incapable of administering their estates.

Chapter 1. Of the Interdiction and Curatorship of persons incapable of administering their estates, whether on account of insanity or of some other infirmity.

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385	281
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Chapter 2. Of the Other Persons to whom Curators are appointed.

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415 Appendix 13

416 Appendix 13

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Title X. of Corporations.

Chapter 1. Of the Nature of Corporations, of their Use and Kinds.

N/A

Chapter 2. Of the Rights and Privileges of Corporations, and of their Incapacities.

N/A

Chapter 3. Of the Dissolution of Corporations.

N/A

Book II. Of Things and of the different Modifications of Property.

Title I. Of Things.

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439 379

Chapter 2. Of Immoveables.

N/A

Chapter 3. Of Moveables.

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472 382

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476 388

477 386

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490 396

Chapter 2. Of the Right of Accession to what is produced by the Thing.

491 397

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496 401

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497 394

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510 412

Section 2. Of the Right of Accession in relation to Moveables.

513 416

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518 418, 424

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Section 1. General Principles.

525 435

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538 398, 439

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587 454

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N/A

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609 467

Chapter 2. Of Use and Habitation.

621 472

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627 470

634 473

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Title IV. Of Predial Servitudes or Servitudes of Land.

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Chapter 2. Of Servitudes which originate from the natural situation of the place.

656 484

658 509

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660 483

661 537

662 538, 539

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676 520

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Section 2. Of the distance and of the intermediary works required for certain Buildings.

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691 525

Section 3. Of Sights on the Property of a neighbor.

692 530

693 532

Section 4. Of the manner of carrying off rain from the Roof.

694 534, 622

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695 622

696 506, 507

704 506

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Section 1. Of the different kinds of Conventional or Voluntary Servitudes.

705 536

707 477

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724 479

Section 2. How Servitudes are established.

749 544

Section 3. How Servitudes are acquired.

765 540

Section 4. Of the Rights of the Proprietor of the Estate to which the Servitude is due.

770 543

773 544

Section 5. How Servitudes are extinguished.

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Title V. Of fixing the Limits, and Surveying of Lands.

N/A

Title VI. Of New Works, the erection of which can be stopped or prevented.

N/A

Book III. Of the Different Modes of acquiring the Property of Things.

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N/A

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881 744

Chapter 2. Of Legal Successions.

Section 1. General Rules.

886 748

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N/A

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899 764

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907 764

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913 Appendix 12

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917 Appendix 12

923 783

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943 554

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967 623, 743

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§ II. Of the Inventory of Vacant and of Intestate Successions subject to Administration.

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N/A

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N/A

§ V. Of the Causes for which a Curator of a Succession may be Dismissed or Superseded.

N/A

§ VI. Of the Sale of the Effects and of the Settlement of Successions administered by Curators.

N/A

§ VII. Of the Account to be rendered by the Curators, and the Commission due to them.

N/A

§ VIII. Of the Duties of Curators, whose Administration is prolonged beyond the legal term.

N/A

§ IX. Of the appointment of Counsel of Absent Heirs, and of their Duties.

1207 1126

Chapter 8. Of Partition, and of the Collation of Goods.

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§ I. Of the Nature of Partition, and of its several kinds.

1223 893

1225 899

1227 915

§ II. Among what Persons Partition can be sued for.

N/A

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1264 909

§ IV. How the Notary is bound to proceed in the Judicial Partition.

1270 1312

1287 908

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1306 911

1309 882

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1314 Introduction to Chapter II, Title III, Book III

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1454 940, 945

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1518 957

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1597 578

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N/A

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N/A

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N/A

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1727 1246

1728 1253

1729 1253

1732 1255

1733 1247, 1248

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1736 1258

1739 653

1742 1259

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N/A

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1765 976

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N/A

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N/A

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1921 1008

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1955 1023

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N/A

Section 7. What Contracts shall be avoided by Persons not Parties to them.

N/A

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